

December 22, 2009

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Docket No. R-1366

Dear Board of Governors:

Season's Greetings. I have waited to forward my remarks to see the most recent bank interpretations of Regulation X. As the deadline for implementation of these changes quickly approaches, the scramble of the banks to adopt procedures and inform their loan originators of their intentions is indicative of how confusing the new regulatory changes really are. If the lending community is this confounded by the new requirements to convey the important initial information, how confused will the consumer be?

I come to the discussion with 22 years of experience in mortgage banking and brokerage. My firm, Asset Center Incorporated, has celebrated its 20th year of service as a mortgage broker. We are successful due to our steadfast adherence to our business model which is based upon integrity and consumer education. My firm has never sponsored bad loans. My approach to business has been to provide a successful consumer borrowing experience; and the ideas I share below are consistent with offering consumers the service they deserve. I also believe that honest mortgage brokers should be *fairly* compensated.

The problems we face as a nation were created due to a grotesque distortion of the good will mission to provide home ownership to the credit worthy. The advent of automated underwriting, with its inherent loose criteria, gave way to rampant credit abuse and fraud. The preponderance of confusing and misleading mortgage loans products, once adjusted to their true obligation, resulted in unprecedented delinquencies and foreclosures.

This good will mission is still at the core of the proposed legislation. While I believe the intent of these changes is to clarify the practice of lending, it is my opinion that the dissemination of more information, in a completely different format, will not curtail bad lending decisions that helped cause the collapse in our lending system. The implementation of such major changes will further belabor a dysfunctional lending process.

Banks have already returned to fundamental, sensible loan programs with sound underwriting tenets. The industry has begun to expunge the bad loan promoters. The elimination of negatively amortizing loan products has mitigated the problem of putting matches into the hands of pyromaniacs. The return to careful, conscientious underwriting has been welcomed by those of us who remember that making a loan is a serious proposition. The climate is no longer conducive to the reckless consumers of credit.

The issuance of accurate disclosures has been mandatory for decades. In the State of New York, licensed mortgage brokers that adhered to federal and state compliance regulations have responsibly disclosed vital loan information. It has proven to be effective when it is done properly. While I regard the new regulatory changes as largely positive, they impose lengthy time restrictions that create multiple problems in terms of rate protection for the consumer, and foil efforts for conducting a timely transaction. In the end, the consumer is not well served.

There are a few suggestions and points I wish to make regarding the proposed RESPA changes and the questions The Board pose regarding appropriate broker compensation:

The Truth-In-Lending Disclosure. The form must be simplified to be a clearer. As currently configured, the form does not indicate the actual rate of interest or the actual loan amount. There is also no purpose in disclosing APR because it is calculated inconsistently. If the consumer understands the cost associated with the loan via the GFE, then the APR becomes extraneous and confusing. In the case of an adjustable rate loan, the APR can be lower than the actual rate. It is my experience that verbal explanations, confirmed by concise, written material, are still the best method of communication and establishing understanding and agreement of the loan parameters and the consumer's responsibilities of repayment.

The four day waiting period for consumer review following the issuance of the initial TIL has proven to be an encumbrance to the flow of the process, which is already bogged down. In purchase transactions, it thwarts progress and causes major delays in fluid real estate markets. In refinance transactions, combined with the 3 day rescission period, the additional four day period wastes a week of rate protection, which is already challenged due to bank delays.

The Yield Spread Premium. There new guidelines provide little protection for the honest loan originator seeking fair compensation. This is evidenced by the zero tolerance for changes to loan originator compensation, regardless of the circumstance. There have been many YSP abuses by unscrupulous brokers who did take advantage of consumers, but most transactions are not characterized by such greed. If there is documentation to support the loan options with corresponding rate/pricing choices, then restricting the manner and source of the compensation will prove to injure the originator, and not necessarily benefit the consumer.

Those of us governed and schooled by the New York State Banking Department have always been disclosing the bank paid compensation in advance of the actual loan application and again on the formal GFE. We also utilize a clear Mortgage Broker Disclosure and Fee Agreement to define the compensation structure. The information on the GFE and Fee Agreement has always matched the HUD. There has always been transparency. This practice has worked because we take the time to explain the rate/point options and the proposed compensation sources. There are many areas of commentary the Board is requesting, but I will keep my comments to the following :

1. Determining the Yield Spread Premium . All consumers want the “best rate”. An honest discussion with a consumer will result in their understanding and accepting the concept of the bank paying its representative broker a fair percentage to negotiate and manage the process , and/ or that they will pay directly, or both. (also addressed in part 2). It is our experience that the threshold of tolerance is maximized at 1.0 – 1.5 points, beyond which the rate becomes obviously non-competitive. Consumers that perform due diligence in comparing a properly disclosed loan will not tolerate a rate with a high YSP. I suggest that banks limit their pricing matrices to 1-2 point YSP. This removes the potential for substantial injury that the Board is concerned about. One local lending institution (Hudson City Savings Bank) maintains a one percent YSP regardless of rate or credit criteria or loan amount. They do not prohibit the collection of an additional broker fee if the consumer consents.

2. Combination of YSP and Broker fee compensation. If the preliminary broker agreement discloses a total compensation of one percent, and there is a change of circumstance unrelated to the actions of the broker, such as a decision to waive tax escrow or a rate lock extension, the fees for these circumstances are usually net from the YSP. These costs should not be borne by the mortgage originator. The bank should charge the consumer directly for this type of change of circumstance. Otherwise, we cannot recover our broker commission, which can be significantly reduced or in some cases, voided altogether.

In the same case of an initially disclosed and agreed one percent fee, where a rate is floating and a preferred rate results in a .50 ysp and the consumer also agrees to pay a .50 broker fee, it should be considered fair and just as long as it corresponds to the total compensation initially disclosed. Often we seek a target rate and work within the rate framework to lock the loan. Engaging a consumer, regardless of their level of sophistication, in a discussion regarding the fee options associated with the transaction, together with comprehensible written disclosures, is the only way to educate and ensure agreement. The affidavit of acceptance now being introduced as part of the new process should refer to this type of discussion as well.

3. Factors influencing the amount of Yield Spread Premium. The YSP or consumer paid compensation should remain as a percentage based upon loan amount. This is a simple concept that the consumer can understand, presuming they are qualified for the loan amount intended.

I fully agree that rates dependent upon other terms and conditions should be eliminated, such as the variation of rate/pricing based upon credit score, loan-to-value or length of rate lock. There is too much movement and confusion with this rate/compensation template and it creates the lack of transparency. This is where most of the confusion and misunderstanding are rooted.

4. Zero tolerance of changes to loan originator compensation. This is utterly unfair. If a loan originator fairly and accurately discloses a loan with a YSP, and then there are multiple changed circumstances outside of anyone's knowledge or control (lower property value, lower credit score, bank delays resulting in the need to extend rates) that dramatically alter the originally disclosed compensation. Banks are notorious for inadvertently delaying the loan process and then charging fees to extend rates, or adjust for loan-to-value ratios or fico score changes. These changes should not be absorbed by the broker.

The threat of a harshly restricted YSP or its elimination has been a serious concern for more than a decade. I emphasize the fact that the YSP serves several valuable purposes other than our source of compensation. The fact is that most consumers want a zero point option. Also, many returning clients doing a refinance are appreciative of our subsidizing their closing costs with part of a lender paid commission. Often, we have had to use a portion of our YSP to extend rates when banks have fouled the loan transaction. Our ability to do this has enabled us to grow our business for 20 years.

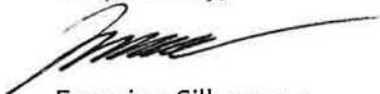
5. Credit Challenged loans with Higher YSP. The Board should acknowledge it is a false premise that there should be greater compensation because these particular loans are more difficult to process. All loans are a challenge to process. If a consumer has a credit problem, they are the least likely to afford the higher rate associated with this type of loan. Risk based pricing as it pertains to this market should be outlawed. The subprime mortgage market best illustrates this type of abuse of YSP, prepayment penalties, and unexpected rate increases.

Creating a Mortgage Broker Panel to interface with the Federal Reserve. Honest brokers offer the consumer an extremely valuable service and are expert in understanding the myriad details involved with managing a loan transaction. Our clients rely upon our advice and experience to get through the gauntlet. Those of us with decades of experience can shed light on many issues.

New York State Mortgage Tax and Title Insurance for refinance transactions. Please take a look at these two areas of truly unnecessary fees. The consumer portion of the mortgage tax ranges between .80% - 1.925% of the total tax, depending on the county. These are exorbitant fees, particularly in refinance transactions where consumers are often short funds to improve or remedy their financial circumstances.

On behalf of my firm, I end my remarks with saying I have great respect and appreciation for your role in governing our financial endeavors. It is also with true hope that my comments can be of use in determining the outcome of further changes for the betterment of our nation.

Respectfully,

A handwritten signature in black ink, appearing to read 'Francine Silberman', with a long, sweeping horizontal line extending to the right.

Francine Silberman
President